IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 599 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

UMEDSINH KHATUBHAI PAGI DAHOD PLICE STATION CHORWAD

Appearance:

1. Criminal Appeal No. 599 of 1992

MS HARSHA DEVANI, APP for Appellant

MR JT TRIVEDI, MR BJ TRIVEDI & HARESH J TRIVEDI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 15/07/2004

ORAL JUDGEMENT

The respondent (original accused No.2) was tried along with co-accused Laxmansinh Jamsinh Bhilawa (original accused No.1), by the learned Judicial Magistrate, First Class, Dahod, in Criminal Case No.1924 of 1989, for the offences punishable under Sections 223 and 224 of IPC. The learned Magistrate, at the end of the trial, acquitted the respondent, by judgment and order dated 31st January 1992. The State has challenged the said order of acquittal, by filing the appeal under

Section 378 of the Cr.P.C.

2. The facts giving rise to the appeal can, briefly be, stated as under:

The respondent, at the relevant time, was serving as a Guard Commander of Dahod Sub-Jail. The incident in question had occurred on 29.6.1989 in the morning at about 7.00 O'clock. On that day, when Lalsinh Motia, an undertrial prisoner who after cleaning the jail room and throwing the garbage, on his return, when the respondent opened the jail room, two other prisoners, namely, Nanji Gula and Laxmansinh Ramsinh pulled the door from inside and after giving a push to the respondent, made efforts to escape from the jail. The respondent shouted for help and also ran after the prisoners. Original accused No.1 - Laxmansinh caught was caught hold of immediately by the other guards. The respondent ran after the other prisoner, Nanji Gula for a distance of about 4 kms., however, as the said prisoner jumped into the river, the respondent could not trace him out. The respondent filed a complaint on the very same day at Dahod Town Police Station which came to be registered as II Crime Register No. 25 of 1989. On the basis of the said complaint, Kalyansinh Sagar, PSI started the investigation and arrested accused No.1- Laxmansinh on 29th June 1989. The respondent was arrested and sent to Court custody on 8.7.1989, for showing negligence in performing the duties by not keeping police guards at the time of taking the prisoners out of the jail.

Original accused No.1 pleaded guilty to the charge levelled against him. The learned Magistrate, by his order dated 4.7.1989 convicted him under Section 224 of IPC and sentenced him to suffer simple imprisonment for 75 days.

The respondent accused pleaded not guilty to his charge framed against him and he was tried.

The learned Magistrate, after appreciating the evidence on record, recorded a finding that the prosecution has failed to establish the charge of negligence levelled against the respondent in performance of his duties and therefore, acquitted the respondent for the offence punishable under Section 223 of IPC.

3. Learned APP Ms.Harsha Devani appearing for the appellant State, after inviting my attention to the evidence on record, submitted that the learned Magistrate has committed an error in acquitting the respondent. She

submitted that the respondent being a Police Guard, could have taken all precautions by keeping other jail guards at the time of taking the prisoners out of the jail. The respondent having failed to take immediate precautions, was negligent totally in performing his duties which resulted in escape of an undertrial prisoners, though one out of them could be caught.

4. Kalyansinh Sagar, PSI, Dahod Town Police Station, in his evidence at Exh.27, who has investigated the case, has deposed that the respondent being an armed Head Constable while getting the jail room cleaned through another prisoner Lalsinh Motibhai and while had gone to throw away the garbage and on his coming back to the jail room, accused Nanji Gula and accused Laxmansinh pulled the door from inside and pushed the respondent, as a result of which, the respondent fell down and the accused tried to escape. The respondent shouted for help and Police Constable Bhimsinh caught hold of Laxmansinh, accused No.1 immediately. The respondent ran after Nanji Gula for about 4 kms., but could not nab him as he jumped into the river. The respondent therefore filed a complaint which was recorded by this witness. According to this witness, as per the requirement of Jail Manual, the Jail Guard was required to keep other guards present while taking out the prisoners from the jail. This witness, in his cross examination, has admitted that being Head Constable, as Guard Commander, the respondent was required to perform duties of 24 hours from 8.00 p.m. to 8.00 a.m. He has admitted that the Sub-Jail is situated in the compound of the Mamlatdar's Office, Dahod and there are residential premises for the staff of police and Government servants. He has admitted that the respondent took out the prisoners out of jail, who belonged to village Abhlod, however, he had not escaped, but the other under trial prisoner escaped. He has also admitted that during the investigation, he came to know that the prisoner who was brought out from the jail room, was sent in after the door was opened and at that time, the other two prisoners pulled the door from inside and gave a push to the respondent. He has also admitted that as the surrounding area of the sub-jail was residential zone, firing was impossible.

This witness, in his evidence, has made a grievance that the respondent was found negligent as he has not kept the other guards present at the time of taking the prisoners out of the jail. Naranbhai, Head Constable, at the Dahod Police Station, at Exh.17, has produced Daily Service Register, which is produced at Exh.18. On 29.6.1989, one Tersinh and Udesinh, i.e.

present respondent herein, respectively, were the guards. Along with them, other Constables, Bharatsinh, Dalabhai, Kalubhai, Raimalbhai and Nathabhai were also performing duties. He has produced the writing to that effect at Exhs.21 and 22. In his cross examination, he has stated that the guard room is situated adjacent to the jail room where bench is provided for the purpose of sitting of guards. He has also admitted that though the toilet is inside, water is not available therein and therefore, one has to go out of the room for the purpose of getting water. He has admitted that cleaning is being done by the prisoners and they have to dispose of the garbage by coming out of the jail.

5. From the evidence of Naranbhai Parmar, Exh.17, it is clear that there were other guards, along with the respondent, at the time of the incident. The incident took place all of a sudden when an undertrial prisoner who went out to throw away the garbage and after his coming back, when the respondent opened the door of the jail room, it was pulled by the two prisoners and they also gave a push to the respondent and they tried to escape. One of the prisoners was in fact caught hold of by original accused No.1- Laxmansinh and therefore, it cannot be said that the respondent did not keep the guards present at the time of taking out the prisoners out of the jail. The respondent, in his statement, recorded under Section 313 of Cr.P.C., has clearly stated that when the two accused pushed him and tried to run away, Police Constable Ramanlal and other persons were also there and they also started running after the accused. He has also stated that as the jail was within the residential area, firing was not possible. On his falling down after getting the push, the other guards came running and locked the door. The explanation given by the respondent appears to be quite natural and consistent with the evidence on record. The fact that the respondent ran for about 4 kms., following accused Nanji and filing of the complaint on the very same day before the Police Station as well as Executive Magistrate are the circumstances which go to suggest that the respondent was vigilant in performing his duties. In any case, the charge under Section 223 of IPC for remaining negligent in performance of duties is not established beyond reasonable doubt, by the prosecution. In my opinion, the trial Court was justified in acquitting the respondent. There being no substance in this appeal, it is dismissed.

(Kshitij R. Vyas, J.)
Sreeram.